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Analysis of Enrolled Senate Bills 631-2

Topic: Residential Builders
Sponsor: Senator Cassis
Co-Sponsors: Senators Basham, Barcia, Thomas III, Bishop, Leland, Cherry, Emerson, Toy, and Birkholz
Committee: Senate Economic Development, Small Business, and Regulatory Reform
House Regulatory Reform

Date Introduced: June 22, 2005

Date Enrolled: December 15, 2006

Date of Analysis: December 18, 2006

Position: The Department of Labor & Economic Growth opposes the bills in their current form. Although the department supports stiffer penalties and greater enforcement for unlicensed activity it does not support the proposed language relating to pre-licensure or continuing education in Senate Bill 632. The department suggested alternative language but this language was not adopted.

Problem/Background: Buying a home is the largest single investment that most people will ever make. Michigan law requires residential builders to be licensed. The Michigan Department of Labor & Economic Growth regularly advises consumers to exercise caution in selecting a builder. Advice includes talking to friends, neighbors, and co-workers who have had good experiences, asking a prospective builder for a copy of his or her license and references, obtaining estimates, and entering into a strong contract. Despite the requirements of Michigan law and the advice of the department, Better Business bureaus, and others, Michigan citizens are still taken advantage of by unscrupulous contractors.

A Detroit television reporter's expose of unlicensed contractors preying on Detroit homeowners resulted in the creation of a bi-partisan task force in the Senate to consider ways to strengthen Michigan laws and protect consumers. The task force met for several months before making its recommendations. In addition to proposals to amend the Occupational Code and related statutes, several members requested and received permission from the Department of Labor & Economic Growth to republish information distributed by the department on choosing a builder or remodeler.

Description of Bill: Senate Bill 632 amends Section 601 of the Occupational Code to substantially increase the penalties for unlicensed activity. The bill creates a three-tiered schedule of penalties. Potential jail time would increase from a maximum of 1 year in jail for a first offense to a maximum of 4 years for third and subsequent offenses. Fines would be set at a

minimum of \$5,000 and a maximum of \$25,000. For third and subsequent offenses, a violation would be classified as a felony. Restitution is required for any violation of the act. The department, Attorney General, county prosecutor, and an attorney representing a local unit of government may utilize forfeiture as a remedy. A court entering a conviction related to a violation of Section 601 is required to notify the Bureau of Commercial Services.

Section 602 is amended to clarify that restitution be based upon proofs submitted to, and the finding made by, the trier of fact and as provided by law.

Several changes are made to Article 24, the residential builder section of the Code. These include requiring one member of the Residential Builders' and Maintenance and Alteration Contractors' Board to be a building official, submission of identification when applying for a licensure, and pre-licensure and continuing education. With respect to continuing education the bill adopts by reference education courses described in a National Association of Homebuilders publication. A qualifying officer is required to obtain a license as an individual. An individual who is also a qualifying officer would have his or her name and license number listed on any license issued to the individual as a qualifying officer. For a corporate license, a copy of an operator's license or personal identification card would be required for each officer, partner, member, or managing agent. In any case where the licensee or respondent fails to appear, participate, or defend, the bill requires granting the relief requested by default. The department is required to post final orders of the board on its website.

The House inserted an amendment to create an inactive license. A licensee designated as inactive is exempt from the continuing education provisions of the bill but must continue to pay the annual license fees. When activating the license, the licensee must complete one credit hour of continuing education for that calendar year.

Senate Bill 631 amends the State License Fee Act to create a Builder Enforcement Fund. The licensee fee for the first license cycle would be increased by \$10 per year. A fee of \$65 would be paid at the beginning of each three-year license cycle for a copy of the Michigan Residential Code or Michigan Building Code.

The bills are tie-barred to each other and Senate Bill 632 is also tie-barred to Senate Bills 826-7.

Summary of Arguments

Pro: These bills will increase the competence of residential builders and provide funding for an enforcement fund to deal with problems created by unscrupulous contractors who prey on the public.

The bills substantially increase penalties for violation of the Occupational Code and will serve as a significant deterrent to unlicensed activity. The forfeiture provisions will provide an incentive for county prosecuting attorneys to prosecute cases involving allegations of unlicensed activity.

Con: The department has a significant concern regarding the proposed pre-licensure and continuing education requirements. As written, these requirements have the potential to

substantially increase the staff that will be needed for the program. The department would prefer a requirement that does not require department approval of courses and providers. The department also does not support a continuing education system that exempts some licensees from compliance. The significant additional costs imposed on the department for administering pre-licensure and continuing education requirements are completely unfunded.

The proposed funding mechanism for the Builder's Enforcement Fund is not likely to provide consistent or sufficient funding for aggressively pursuing unlicensed activity. The bills only provide for a one-time infusion of money into the Fund. The estimated \$2-2.5 million that would be generated by the fees would provide sufficient funding for a year or two but after that only minimal new funding would be available as new builders are licensed.

Creating still another enforcement fund under the umbrella of the Occupational Code is undesirable. We already have separate enforcement funds for real estate and accountancy, and there were proposals from builders and the design professions in 2005. All professions are concerned about unlicensed activity, and there will be similar proposals in the future from other professions. It would be much more efficient to establish a single fund.

The inactive license amendment, which was adopted by the House on the last day of session, has problems. Such a license status is unique in the state's professional licensing statutes. Also, the department would be compelled to develop forms and process applications with no funding in the bills to do so. Finally, it is not clear whether a person holding an inactive license is obligated to pay the code book fee.

It is not clear what public benefit is served by requiring every licensed builder to buy a code book that he or she will not use. Builders already have the option of buying the book if they need it. The code book is published by another bureau in the Department of Labor & Economic Growth. The bill will at least triple the number of code books sold by the department, which will create significant logistical challenges to the department in warehousing and distributing these books to licensees. One of the department proposed amendments would have streamlined distribution of the code books and provided some assurance that the licensee was familiar with its contents. This amendment was not adopted.

Fiscal/Economic Impact

(a) Department

Budgetary: The pre-licensure and continuing education provisions in the bills will require additional staffing. It is estimated that 5 additional staff will be required to administer these requirements at a cost exceeding \$425,000.

Revenue: Senate Bill 631 will increase residential builder licensee fees to \$60 per year for the first three-year license cycle after enactment and to \$50 per year for subsequent license cycles. Licensee fees are currently set at \$40 per year. The additional \$30 in the first license cycle would be used to create the Builders Enforcement Fund. The \$65 code book

fee will substantially increase revenues from sales of these books, but these revenues will only offset the department's costs related to compiling and printing the book.

Comments: The proposed inactive license status may have a significant impact on revenues. Currently, there are over 80,000 licensees, most of whom would typically be expected to renew those licenses. The creation of an inactive license could have the effect of substantially increasing the number of builders who choose not to renew their license, because they will now be able to come back into the system at any time without going through the relicensure procedure.

(b) State

Budgetary: The bills will have no direct impact on the state GF/GP budget.

Revenue: The bills will have no direct impact on state revenues. If revenues from licensee fees are insufficient to cover the additional costs imposed by these bills or if a greater than expected number of builders decide not to renew their licenses, other revenues may have to be diverted for these purposes.

Comments:

(c) Local Government

Comments: The increased penalties in the bill and particularly the forfeiture provisions should help increase the interest of local prosecutors in unlicensed builder cases. The Builder's Enforcement Fund may also be used to directly reimburse county prosecutors for the costs of prosecuting a case.

Other State Departments: The Department of Attorney General has an interest in this bill.

Any Other Pertinent Information: The Michigan Association of Homebuilders and the Building Industry Association of Southeast Michigan support the bills.

Some of the provisions in Senate Bill 631 are also incorporated in Senate Bill 826. When Senate Bills 826-7 and 631-2 were reported out of Senate committee a fifth bill, Senate Bill 1273, was included in the package. This bill requires the Department of Labor & Economic Growth to publish certain consumer information on choosing a builder and building a home. This bill is not tie-barred to the rest of the package.

These bills were discharged from the House Regulatory Reform Committee on Tuesday, December 13. A committee meeting was posted during the last week of session in September, but the meeting recessed at the call of the Chair while discussions regarding an additional tie bar to a carpenter regulation bill occurred. Ultimately, there was no agreement on the carpenter regulation bill, and the committee never actually convened to take testimony on the bills.

Administrative Rules Impact: New administrative rules will be required to implement the pre-licensure and continuing education provisions in the bill.